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January 14, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: Notice of Generic Workshop on Filing Requirements for Integrated
Resource Plans
Docket No. 2019-224-E. Duke Energy Carolinas, LLC ("DEC")
Docket No. 2019-225-E. Duke Energy Progress, LLC ("DEP")

Dear Ms. Boyd:

I am writing on behalf of DEC and DEP (collectively "Duke Energy") about the workshop that is scheduled for January 30, 2020 with a requirement that stakeholders indicate their plans for participating by January 22, 2020. The Commission's notice of the workshop indicates that it is intended to provide an opportunity for stakeholders to provide their suggestions regarding filing requirements for Integrated Resource Plans ("IRPs"). The workshop has been noticed in the two referenced dockets that relate to Duke Energy IRPs as well as Dockets 2019-226-E and 2019-227-E for Dominion Energy and Lockhart Power respectively.

The purpose of this letter is to describe questions and concerns that Duke Energy has about the expectations for the workshop. Duke Energy respectfully requests guidance so that it may make decisions about possible presentations and presenters. This is especially important given that the IRP dockets are expected to be litigated; indeed, Act 62 provides that direction. Having this kind of workshop in advance of a litigated case, with no application currently on file, implicates a number of issues. For example, the rules referenced by the Commission in the notice (R.103-817 and 103-858) suggest the workshop will be conducted as a hearing, with a formal record. In that case, will there be a court reporter? Will there be questions of any presenters, and if so by whom? Will presenters be sworn in? Will there be a formal intervention date to notify interested parties of a duty to intervene to participate? Is this a topic better addressed with written comments or an allowable ex parte briefing versus a workshop? Having a workshop in advance of litigated dockets presents different issues than workshops on subjects that are not expected



to be litigated before the Commission, like, for example, the Bill Round Up workshop.

These questions, while practical questions, are also driven by Duke Energy's desire to remain compliant with the ex parte communication prohibitions of S.C. Code Ann. §58-3-260. Subsection (B) of §58-3-260 generally prohibits communications with the Commission or its staff regarding issues that can reasonably be expected to come before the Commission, unless all parties are provided notice and an opportunity to be heard. In these dockets, in which no intervention deadlines have been established, it is not possible to identify the "parties" who are required to be given notice and an opportunity to be heard. The presentations contemplated by the workshop notice would be communications on issues that can reasonably be expected to be presented in the various IRP proceedings. Accordingly, it appears that the workshop would potentially violate the prohibition of §58-3-260(B).

One possible solution to avoid a violation of the ex parte communication restrictions would be to take written comments instead of a workshop, and then schedule an allowable ex parte briefing where all parties could address the comments. Or, perhaps the Commission could treat the workshop itself as an allowable ex parte briefing under §58-3-260(C)(6). Although ex parte briefings are typically requested and given by one entity, there is nothing in the statutory scheme that would prevent the Commission itself from initiating the briefing, provided that sufficient time was allowed for stakeholders to express their interest in making a presentation so that the notice requirements of the ex parte briefing statute can be met. The workshop notice that was issued on December 30, 2019 requested that stakeholders who want to make presentations on January 30th should notify the Commission by January 22nd. If another notice is issued either late on the 22nd or early on the 23rd the five-business day requirement of subsection 58-3-260(C)(6)(a)(v) would be met. The subsequent notice could treat the workshop as an ex parte briefing and identify the people who will be giving presentations. As long as the presenters cooperate with the Office of Regulatory Staff in meeting its certification obligations, we believe that all of the statutory requirements could and would be met.

In making these proposals (either comments followed by ex parte briefings or converting the workshop to an ex parte briefing) it is the intention and expectation of Duke Energy that the substance of the workshop would not be affected. We think that if either proposal is implemented by the Commission, interested parties would be able to make the presentations they want to make and that the Commissioners would be able to ask the questions they want to ask.

It remains Duke Energy's intent to be transparent and provide the Commission and interested stakeholders with its views on the IRP issues listed in the December 30 notice, but the Company does want to ensure that it is being compliant with the legal requirements in place which govern this type of communication in South Carolina.



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Thank you for your consideration of this request.

Yours truly,

Frank R. Ellerbe, III

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cc via email:

Parties of Record in Dockets 2019-224-E, 2019-225-E, 2019-226-E & 2019-227-E
Heather Shirley Smith, Deputy General Counsel
Rebecca J. Dulin, Associate General Counsel